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IN THE

Supreme Court of the United States

October Term, 1941

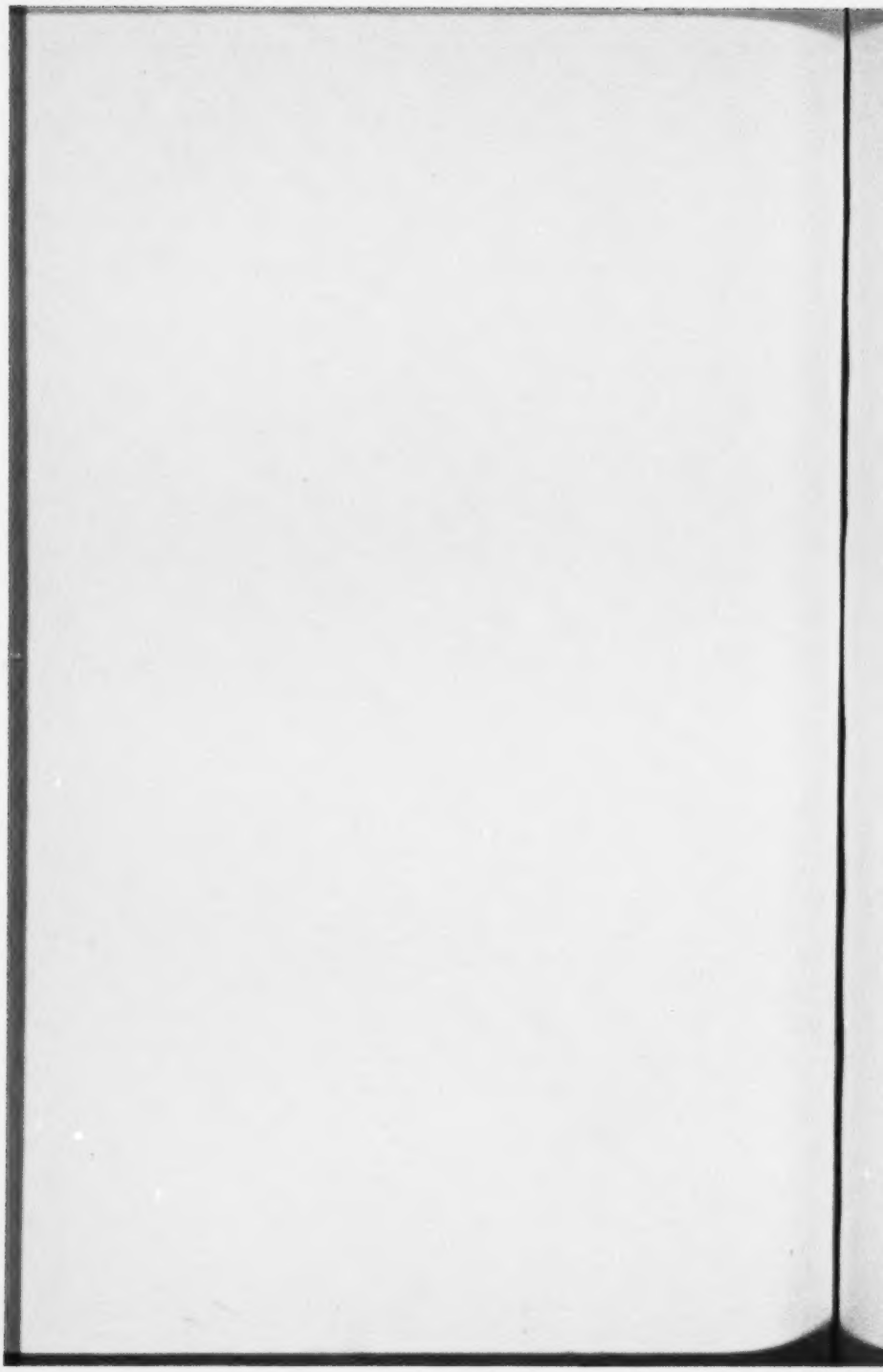
No. 690

PAUL PATTERSON, ET UX.,
Petitioners,

vs.

W. E. PEEL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS



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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The petition of Paul Patterson and Mrs. Paul Patterson for a Writ of Certiorari to the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas, Beaumont, Texas, respectfully shows to this Honorable Court:

I.

QUESTIONS PRESENTED

This suit is an action brought by Respondent against Petitioners to recover title to and possession of land. Petitioners' claim of title and right of possession depends upon the location of Washington County Railroad Company Survey No. 13 in Montgomery County, Texas. The questions presented are:

(a) Were Petitioners denied, in this case, due process of law in violation of the guaranties of the 14th amendment to the Constitution of the United States, by the Court of Civil Appeals, holding Petitioners bound with respect to the location of the Washington County Railroad Company Survey No. 13 and Evantha Scurry Surveys by the judgment entered in another case to which Petitioners were not parties and under which Petitioners do not claim?

(b) Were Petitioners denied, in this case, due process of law in violation of the 14th amendment to the Constitution of the United States by the Court of Civil Appeals refusing to consider the evidence offered by Petitioners to show the location of Washington County Railroad Company Survey No. 13 in Montgomery County, Texas?

II.

STATUTORY PROVISIONS SUSTAINING JURISDICTION

This Court has jurisdiction to review by certiorari the judgment of the Court of Civil Appeals for the

Ninth Supreme Judicial District of Texas under Section 237 of the Judicial Code as amended (U. S. C. A., Title 28, Section 344) which provides that:

> "(b) It shall be competent for the Supreme Court by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of the state in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

III.

PROVISION OF CONSTITUTION INVOLVED

The provision of the Fourteenth Amendment to the Constitution of the United States, under which Petitioners specially set up and claim rights, privileges and immunities, reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws."

IV.

DATE OF JUDGMENT AND DATE OF PRESENTATION OF PETITION FOR CERTIORARI

The judgment of the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas sought to be reviewed herein was entered on February 13, 1941 (R., 39). Petitioners' Motion for Rehearing was filed in the said Court of Civil Appeals within fifteen days as authorized by Article 1877, Revised Civil Statutes of Texas, 1925 (R., 40, 51). This motion was entertained by the Court of Civil Appeals and overruled on Apirl 2, 1941 (R., 52). Thereupon, within the time allowed by applicable state statute (Article 1742, Revised Civil Statutes of Texas, 1925), Petitioners petitioned the Supreme Court of Texas to grant a writ of error and review the judgment of the Court of Civil Appeals (R., 53-64). The Petition for Writ of Error was refused by the Supreme Court of Texas on June 11, 1941 (R., 84). The Petitioners thereupon within fifteen days, as authorized by Rule 4 of the rules of the Supreme Court of Texas, filed their Motion for Rehearing of the Application for Writ of Error (R., 65-83). This motion was entertained by the Supreme Court of Texas and was overruled on July 9, 1941 (R., 84), whereupon the judgment of the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas, here sought to be reviewed, became final under state law.

The said Court of Civil Appeals has possession of the record in this cause and is the "highest Court of the state in which a decision in the suit could be had."

The date on which this Petition for Certiorari is presented is October 7, 1941.

V.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This suit was instituted by Respondent in the District Court for the Ninth Judicial District of Texas, Montgomery County, Texas, as an action in trespass to try title to recover title to and possession of 522.5 acres of land described in Repondent's petition (R., 3-6). Petitioners answered by plea of not guilty, and disclaimer except as to the land described in Respondent's petition in conflict with a 282-acre tract, as to which Petitioners plead not guilty (R., 8). The case was tried before a jury and submitted on special issues, and upon the jury's verdict and facts found by the Court, not found by the jury (R., 23-28), judgment was rendered by the trial Court for Respondent against Petitioners (R., 23).

Respondent alleged and contended that the 522.5 acres of land was the Evantha Scurry Survey as surveyed by L. Burns on November 11, 1898 (R., 3), and patented December 2, 1898 (R., 21).

It was Petitioners' contention that the senior Washington County Railroad Company Survey No. 13, as surveyed by John M. Wade in 1861 (R., 9), and patented April 3, 1877 (R., 11), adjoins, by its calls and by course and distance, the East lines of

the L. B. Weeden (Owens) Survey, patented April 15, 1851 (R., 15), and John A. Davis 1280-acre survey, patented November 15, 1850 (R., 17), and the South line of the Wm. B. Bridges Survey, calling for the same three witness trees at its Northwest corner as described at the Southwest corner of the Wm. B. Bridges Survey in its patent dated April 21, 1849 (R., 13); that the Evantha Scurry Survey, as patented December 2, 1898 (R., 21-22), is entirely North of Washington County Railroad Company Survey No. 13, as patented April 3, 1877 (R., 11), and conflicts with the Wm. B. Bridges Survey, as patented April 21, 1849; that the 522.5 acres described in Respondent's petition (R., 3) conflicts with the Northern part of Washington County Railroad Company Survey No. 13 (R., 9) and conflicts with the land deeded to Petitioners as a part of Washington County Railroad Company Survey No. 13 (R., 11) that Respondent's record title does not cover the 522.5-acre tract described in his petition and that he did not have title by limitation because of the occupancy of T. E. McDonald, grantor in Petitioners' deed, a record owner in the senior Washington County Railroad Company Survey No. 13; and that if it could be determined that any part of the Scurry Survey was in conflict with the senior Washington County Railroad Company Survey No. 13, the junior Scurry Survey and patent were void to the extent of such conflict.

Petitioners further contended that there was no finding by the jury fixing the disputed location of the South boundary line of the Evantha Scurry Survey nor the North boundary line of Washington

County Railroad Company Survey No. 13 (R., 23-26) and that there was no finding by the jury to support the judgment of the trial Court fixing the ground location of the Southeast corner of the Scurry Survey.

Petitioners appealed the cause to the Court of Civil Appeals for the Ninth Supreme Judical District of Texas, which Court affirmed the judgment of the trial Court (R., 34-39) by holding in its opinion (R., 34-38) that the findings in the case of *State, et al., vs. Humble Oil & Refining Company, et al.* (Tex. Civ. App., opinion dated April 5, 1939), 128 S. W. (2d) 424, writ of error refused by the Supreme Court of Texas, were binding, as a matter of law, upon Petitioners (who were neither parties to nor in privity with the judgment in that case), on the principles of *stare decisis*, and refused to consider the evidence introduced in the case at bar supporting Petitioners' contention as to the location of the surveys in question (R., 35). Based upon this theory, the Court of Civil Appeals, without reviewing the evidence, held that no part of the land sued for is on the Washington County Railroad Company Survey No. 13 in upholding the jury's finding on the issue of five years limitation in favor of Respondent (R., 34-38).

The only written opinion delivered in the State Courts is that of the Court of Civil Appeals (R., 34-38), which is unofficially reported in 149 S. W. (2d) 284.

VI.

NATURE OF THE RULINGS OF THE STATE COURT BRINGING THE CAUSE WITHIN THE JURISDICTION OF THIS COURT

(Under this heading also will be shown when and how the federal question sought to be reviewed was raised; the method of raising it; and the way in which it was passed upon by the State Court.)

The federal question sought to be reviewed herein arose in the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas upon its refusal to consider the evidence introduced by Petitioners in this case supporting Petitioners' assignment of error attacking the verdict of the jury and the action of the trial Court in finding facts necessary to support its judgment not found by the jury nor supported by the evidence, upon the theory that the location of the surveys in question by the judgment, based upon findings of a jury, in the case of *State, et al., vs. Humble Oil & Refining Company, et al.* (Tex. Civ. App., opinion dated April 5, 1939, rehearing denied May 3, 1939), 128 S. W. (2d) 424, writ of error refused by the Supreme Court of Texas, were binding, as a matter of law, upon Petitioners (who were neither parties to nor in privity with the Judgment in that case) on the principles of *stare decisis* (R., 35); and in holding, in support of this theory, that in the case of *McDonald vs. Humble Oil & Refining Company*, 78 S. W. (2d) 1068 (to which Petitioners were neither parties nor privies), the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas, had before it the very issues

on the location of corners and lines of the Bridges, Littlefield and the Washington County Railroad Company Survey No. 13 in controversy in the case at bar.

Predicated upon the holding that the judgment in *State, et al., vs. Humble Oil & Refining Company, et al., supra,* was binding upon Petitioners as a matter of law, the Court of Civil Appeals held that Petitioners' deed to a part of Washington County Railroad Company Survey No. 13 conveyed to them no interest in the land in controversy; that the land in controversy was the Scurry Survey; that Petitioners' possession was that of naked trespassers. Upon the theory that the location of the surveys in question were fixed by the findings in the case of *State, et al., vs. Humble Oil & Refining Company, et al., supra,* and that the judgment in that case was binding upon Petitioners, the Court of Civil Appeals affirmed the judgment of the trial Court by sustaining the finding of the jury on the issue of five years limitation in favor of Respondent (R., 34-38).

These rulings of the Court of Civil Appeals were duly assigned as errors in Petitioners' Motion for Rehearing (R.,41-43), which Motion for Rehearing was overruled (R., 52). The rulings were then complained of in the Application for Writ of Error filed in the Supreme Court of Texas (R., 58-61), the Application for Writ of Error being refused (R., 84). The same rulings were complained of in Petitioners' Motion for Rehearing filed in the Supreme Court of Texas (R., 81-82), which motion was by that Court overruled.

VII.

STATEMENT OF THE GROUNDS UPON WHICH IT IS CONTENDED THAT THE FEDERAL QUESTIONS ARE SUBSTANTIAL AND CASES BELIEVED TO SUSTAIN JURISDICTION

The holdings of the Court of Civil Appeals on non-federal questions to support the judgment of the trial Court are so interwoven and dependent upon the holding that Petitioners are bound by the judgment in the case of *State, et al., vs. Humble Oil & Refining Company, supra*, and the refusal of the Court of Civil Appeals to review (consider) the evidence supporting Petitioners' contention in the case at bar, that Petitioners have been denied a hearing and their property has been taken without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States. We believe the very opinion of the Court of Civil Appeals presents two substantial federal questions, of which the Supreme Court of the United States has jurisdiction.

It appears from the opinion of the Court of Civil Appeals (R., 36) that the Court's upholding Respondent's recovery under the Texas five-year statute of limitation (copied in the appendix) was founded upon the holding that the location of Washington County Railroad Company Survey No. 13 and Evantha Scurry were fixed by the judgment in the case of *State, et al., vs. Humble Oil & Refining Company, et al., supra*, and that the findings in that case were binding upon Petitioners on principles of stare decisis.

In *Creswill vs. Grand Lodge Knights of Pythias*, 225 U. S. 246, 264, this court held:

> * * * "that where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to cause it to be essentially necessary, for the purpose of passing upon the Federal question, to analyze and dissect the facts, to the extent necessary to do so the power exists as a necessary incident to a decision upon the claim of denial of the Federal right."

In *Enterprise Irrigation District vs. Farmers Mutual Canal Company*, 243 U. S. 157, 166, this Court said:

> "But where the non-Federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain."

In *Postal Telegraph-Cable Company v. Newport*, 247 U. S. 464, 476, this Court held:

> "Res judicata, like other kinds of estoppel, ordinarily is a matter of state law, and as the decision of the state court in this case in effect rests upon the ground, this of itself would be sufficient to sustain the judgment against reversal in this court, except for two queries that must first be answered: (a) Is the question of law, in this case, independent of the Federal questions: and (b) Is the decision reached upon that

point sufficiently well founded to furnish adequate support for the judgment? Eustis v. Bolles, 150 U. S. 361, 366, 37 L. ed. 1111, 1112, 14 Sup. Ct. Rep. 131; Southern P. Co. v. Schuyler, 227 U. S. 601, 610, 57 L. ed. 662, 668, 43 L.R.A. (N.S.) 901, 33 Sup. Ct. Rep. 277; Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co., 243 U. S. 157, 164, 61 L. ed. 644, 648, 37 Sup. Ct. Rep. 318.

Waiving the doubt whether, under the particular facts of this case, the question of res judicata can be regarded as independent of the Federal questions that were raised, we are of the opinion that the decision reached upon it is so clearly ill-founded that it cannot sustain the judgment; and this for the reason that it is inconsistent with another Federal right of defendant, fundamental in character.

The doctrine of res judicata rests at botton upon the ground that the party to be affected, or some other with whom he is in privity, has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction. Southern P. R. Co. v. United States, 168 U. S. 1, 48, 42 L. ed. 355, 376, 18 Sup. Ct. Rep. 18; Greenl. Ev. Secs. 522, 523. The opportunity to be heard is an essential requisite of due process of law in judicial preceedings. Windson v. McVeigh, 93 U. S. 274, 277, 23 L. ed. 914, 915; Louisville & N. R. Co. v. Schmidt, 177 U. S. 230, 236, 44 L. ed. 747, 750, 20 Sup. Ct. Rep. 620; Simon v. Craft, 182, U. S. 427, 436, 45 L. ed. 1165, 1170, 21 Sup. Ct. Rep. 836. And as a state may not, consistently with the 14th Amendment, enforce a judgment against a party

named in the proceedings without a hearing or an opportunity to be heard (Pennoyer v. Neff, 95 U. S. 714, 733, 24 L. ed. 565, 572; Scott v. McNeal, 154 U. S. 34, 46, 38, L. ed. 896, 901, 14 Sup. Ct. Rep. 1108; Coe v. Armour Fertilizer Works, 237 U. S. 413, 423, 59 L. ed. 1027, 1031, 35 Sup. Ct. Rep. 625), so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein."

Again in *Brinkerhoff-Faris Trust & Savings Company v. Hill*, 281 U. S. 673, 682, this Court in reversing the judgment of the Supreme Court of the State of Missouri on Writ of Certiorari held:

"But, while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

"The court's finding of laches was predicated entirely on the plaintiff's failure to apply to the state tax commission. In view of what we have said, this ground is not sufficient independently to support the judgment. And, as the Supreme Court of Missouri did not decide whether the allega-

> tions of the plaintiff's bill were sustained by the proof, we do not inquire into the merits of the plaintiff's claim under the equal protection clause."

In *Baltimore & O. R. Company v. United States*, 298 U. S. 349, 391, the Court said:

> "The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to inroduce evidence and have judicial findings based upon it."

In *Georgia Railway & Electric Company v. Decatur*, 295 U. S. 165, 174, the Court held:

> "The refusal of a court to receive or consider any proof whatever on the subject amounts to a denial of a hearing on that issue, in controvention of the due process of law clause of the Constitution."

In *Coe v. Armour Fertilizer Works*, 237 U. S. 413, 426, this Court said:

> "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits."

VIII.

REASONS FOR GRANTING THE WRIT

A. Petitioners' substantial rights under the Fourteenth Amendment to the Constitution of the United States were denied to them by the Court of Civil Appeals for the Ninth Supreme Judicial District of Texas in holding that the findings supporting the conclusion of a Court of Civil Appeals, in *State vs. Humble Oil & Refining Company, et al., supra,* in respect to the boundaries and corners of the Bridges, the Littlefield and the Washington County Railroad Company Survey No. 13, and other surveys in issue, were binding upon all parties to the case at bar on the principles of *stare decises,* and, upon such holdings, in refusing to review the evidence supporting Petitioners' assignments of error. Petitioners were thereby denied a hearing and their property taken without due process of law as effectively as though there had been no trial of the case.

B. The Court of Civil Appeals for the Ninth Supreme Judicial District has decided a federal question of substance in a way probably not in accord with applicable decisions of this Court, in this: The said Court of Civil Appeals has given a conclusive effect to a prior judgment in the case of *State, et al., vs. Humble Oil & Refining Company, et al., supra,* against Petitioners who were neither parties nor in privity with the judgment therein, and overruled Petitioners' exceptions to that ruling. This decision

of the Court of Civil Appeals is probably not in accord with the decision of this Court in *Postal Telegraph-Cable vs. Newport*, 247 U. S. 464, 476, or in accord with the decision of *Iron Cliffs Company vs. Negaunee Iron Company*, 197 U. S. 463, 475, in which the Court, in holding that the Pioneer Iron Company could not be affected in any way by the opinion and decision of the Supreme Court of Michigan, said:

> "It is apparent that the questions decided in the state supreme court were of a non-federal character, and give no right of review here unless it is true that in this judgment the Pioneer Iron Company has been concluded and its property rights taken without giving it an opportunity of being heard in the case. It is fundamental that no person can be deprived of property rights by any decree in a case wherein he is not a party. If it should hereafter be insisted that the rights of that company or its agents are concluded, a Federal question might arise if such effect shall be given to the decree in this action."

C. The Court of Civil Appeals for the Ninth Supreme Judicial District has decided a federal question of substance in a way probably not in accord with applicable decisions of this Court, in this: The said Court of Civil Appeals refused to review and consider the evidence supporting Petitioners' assignment of error attacking the verdict of the jury and fact findings by the trial Court and the judgment of

the trial Court bearing upon the location of the surveys in question and title to the land in controversy, and the Court of Civil Appeals has overruled Petitioners' exceptions to that ruling. This action of the Court of Civil Appeals is probably not in accord with the decisions of this Court in *Baltimore & O. R. Company vs. United States*, 298 U. S. 349, 391, or with the decision in *Georgia Railway & Electric Company vs. Decatur*, 295 U. S. 165, 174. In the latter case the Court held:

> "The refusal of a court to receive or consider any proof whatever on the subject amounts to a denial of a hearing on that issue, in contravention of the due process of law clause of the Constitution."

WHEREFORE, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Civil Appeals for the Ninth Supreme Judicial District of the State of Texas at Beaumont, Texas, commanding that Court to certify and send to this Court, on a day certain to be therein named, for its review and determination a full and complete transcript of the record and proceedings had in said Court, entitled and numbered on its docket No. 3809, *Paul Patterson, et ux., Appellants, vs. W. E. Peel, Appellee*, to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States, and that the judgment of the said Court of Civil Appeals be reversed by this Court,

and for such other and further relief as to this Honorable Court may seem right and proper.

Dated this 7th day of October, 1941.

DAN MOODY,
W. P. MCCOMB,

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